

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

WILLIAM ROY WELCH, INDIVIDUALLY	\$
AND JERRY SOWELL AND JARROD	\$
SOWELL, INDIVIDUALLY, AND AS	\$
NEXT FRIEND OF JADEN SOWELL,	\$
A MINOR	\$

Plaintiffs

VS.

Civil Action No. 2-09CV-018

**DOREL JUVENILE GROUP, INC.;
AND JANELLE SOWELL**

Defendants

PLAINTIFFS' MOTION TO NONSUIT ALL DEFENDANTS WITHOUT PREJUDICE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Jerry Sowell and Jarrod Sowell, Individually, and as Next Friend of Jaden Sowell, a Minor, Plaintiffs in the above entitled and numbered cause, requesting leave of the Court to nonsuit their claims against all defendants without prejudice, and in support of said motion would respectfully show unto the Court the following:

I.

The Parker Firm, counsel for The Estate of Janelle Sowell, deceased, consulted with Rhonda Moton regarding this litigation and obtained an affidavit from Rhonda Moton dated January 18, 2013 indicating her decision not to pursue the causes of action against all defendants. On January 22, 2013, Andrews & Andrews obtained an affidavit from Forrest Mays, counsel for Defendant, The Estate of Janelle Sowell indicating by affidavit executed January 18, 2013 that the guardian of the minor child Jaden Sowell is Rhonda Moton, the grandmother of the minor child Jaden Sowell, and the mother of Janelle Sowell, deceased. (*See Exhibit A attached hereto.*) Further, the affidavit executed January 18, 2013 by Rhonda Moton and received by Andrews &

Andrews on January 22, 2013 indicates that Ms. Moton has made the decision not to pursue a claim on behalf of her injured grandchild Jaden Sowell against Defendants Dorel Juvenile Group, Inc. or the Estate of Janelle Sowell, Deceased.

Two experts have been designated by Reese P. Andrews, Andrews & Andrews, Plaintiffs' counsel indicating that the cause of action against Dorel Juvenile Group, Inc. has merit. Nevertheless, in the previous telephonic conference held by the Court in this matter, the Court indicated its intention to allow the present guardian of the child to make the ultimate decision as to whether or not to continue to pursue the present products liability claim against Dorel Juvenile Group, Inc. The decision made by Ms. Moton in that regard has apparently been made and has been set forth in the aforementioned affidavit executed by Rhonda Moton on January 18, 2013.

Given the legal capacity of the present guardian or any subsequent guardian to bring a cause of action against Dorel Juvenile Group, Inc. or any other defendant that has a causational relationship with the minor's traumatic injuries sustained in this tragic collision up until the two year anniversary of the child's eighteenth birthday, it is the position of counsel for plaintiffs, Reese P. Andrews, that the right of the minor child in that regard should be protected and accordingly, counsel for the minor child Reese P. Andrews, Andrews & Andrews, urges the Court as part of this motion to allow the present cause of action to be nonsuited without prejudice in order to preserve those rights of the injured minor child Jaden Sowell. Moreover, the granting of this motion should make moot any discovery issues addressed by the Court in its telephonic conference with all counsel, which conference was held on January 10, 2013. There are presently no other pending motions of any kind for the Court's consideration, whether motions for summary judgment, motions to dismiss, motions concerning discovery issues, or any

other dispositive motions.

WHEREFORE PREMISES CONSIDERED, counsel for Plaintiff moves this Honorable Court to allow this cause of action to be nonsuited without prejudice so that the present guardian Rhonda Moton, or any succeeding guardian who might reach a different conclusion with respect to the propriety of pursuing a cause of action on behalf of the injured minor child may do so within the time frame of the applicable statute of limitations. It is requested that the Court apportion costs in this cause of action to the party incurring same.

Respectfully submitted,

Reese Andrews
ANDREWS & ANDREWS
311 E. Main
Nacogdoches, Texas 75961
(936) 564-5000
(936) 559-5000 - Facsimile

By: _____/s/_____
Reese P. Andrews
State Bar No. 0128800
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded to the below listed counsel of record in compliance with Rule 21a, Texas Rules of Civil Procedure on this the 25th day of January, 2013.

_____/s/_____
Reese P. Andrews

CERTIFICATE OF CONFERENCE

Forrest Mays, Counsel for Defendant, the Estate of Janelle Sowell, does not oppose the motion to nonsuit the cause of action against Defendant Dorel Juvenile Group, Inc. Walter Greenough, Counsel for Defendant Dorel Juvenile Group, Inc., indicated his objection to the motion for nonsuit without the imposition of attorneys' fees.

_____/s/_____
Reese P. Andrews